IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Mohan Lal Vyas
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.2237/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 15th December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Tribhuvan Gupta, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

Heard learned counsel for the parties.

Shri Tribhuvan Gupta, learned counsel for the petitioner

in the present writ petition has challenged action of the respondents in seeking to make certain recoveries from the pension of the petitioner on the basis of order dated 06th January, 2003 and has prayed for quashment of the said order.

It has been stated that the petitioner was initially appointed on work charge basis by order dated 04th June, 1966 and thereafter he was selected on regular basis as on the post of L.D.C. by order dated 01st January, 1968 and on which post he was thereafter granted regular scale on 01st January, 1968 and was later confirmed on 28th June, 1970. The petitioner was thereafter promoted on the post of U.D.C. by order dated 03rd June, 1978. While the pay of the petitioner on the post of U.D.C. was fixed on 24th July, 1978 he was allowed next increment on that post on 01st September, 1978. The petitioner was awarded benefit of revised scale of pay under Revised Pay Scale Rules from time to time such as the Rules of 1976 and the Rules of 1987. He was also allowed the benefit of selection scale on completion of 9, 18 and 27 years of service in terms of the Government Circular dated 25th January, 1992

by orders dated 10th April, 1992 and 24th April, 1995 respectively. He was promoted on the post of Assistant by order dated 11th July, 1995 pay of which was fixed in revised pay scale rules of 1998. Having attaining the age of superannuation, he retired on 30th April, 2002 and his pension pay order was issued on 01st May, 2002. The Superintendent Geology (Phosphate), Mines & Geology Department, Government of Rajasthan, Udaipur has written a letter to Joint Director, Pension & Pensioner's Welfare Department, Udaipur in which the period of service rendered by the petitioner from 04th June, 1966 to 01st January, 1968 was considered as work charged service. Request was made to the Joint Director, Pension & Pensioner's Welfare Department to forward the service book of the petitioner so that recoveries may be affected accordingly.

Shri Tribhuvan Gupta further argued that there was no fraud played by the petitioner upon the respondents and therefore at this belated stage when the petitioner has retired from service the respondents cannot be allowed to make

recoveries. Their action in seeking to make such recoveries from the pension amount of the petitioner is arbitrary, illegal and unreasonable. No opportunity of hearing was given to the petitioner prior to passing of the said order. Such an order was therefore liable to be set aside.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate argued that the period during which the petitioner was serving from work charge basis could not be counted for the purpose of grant of the increment. It was argued that in the year 1976, the State Government has issued the Revised Pay Scale Rules 1976 w.e.f. 01st September, 1976. By this revised pay scale, State Government has prescribed an additional benefit of granting one increment to those employees who has completed 10 years of service but not completed 20 years of service, two increments, who have completed 20 years of service but no completed 30 years and three increments who have completed more than 30 years of service on 01st September, 1976. The petitioner was wrongly granted one increment w.e.f. 01st September, 1976 by counting

the service of daily wages period fro which he was not entitled.

It was further argued that the state government has promulgated Revised Pay Scale Rules 1988 for the employees w.e.f. 01st September, 1986 and by this revised pay scale the benefits of granting one additional increments was given to the employees who have completed 10 years of service but not completed 20, two increments who have completed 20 years of service but not completed 30 years and three increments who have completed more than 30 years of service on 01st September, 1986. In the Revised Pay Scale Rules 1988 the petitioner was wrongly granted two increments instead of one increment by calculating the period served as daily wages by the petitioner. The date of appointment of petitioner as an L.D.C. is 02nd January, 1968. Therefore he has not completed 20 years of service on 01st September, 1986 and at that time, he is entitled for one additional increment only instead of two increments which were wrongly given to him. This mistake is liable to be rectified on the face of record.

It has been further argued that the above wrong fixation

come in the knowledge of replying respondents at the time of audit made by Accountant General, Rajasthan, Jaipur and the audit party has directed the replying respondent that petitioner was appointed as L.D.C. on 02nd January, 1968 but the period from 04th June, 1966 to 01st January, 1968 was wrongly counted for granting additional increments in the Revised Pay Scale Rules, 1976 and 1986, which was not as per rules. Therefore Benefits of granting one additional increment from 01st September, 1976 and one additional increment from 01st September, 1986 are recoverable from the petitioner. He therefore argued that the writ petition be dismissed.

Additional benefit of one grade increment to those employees who had completed 10 years, 2 grade increments those who had completed 20 years and 3 grade increments who had completed 30 years was allowed by the Government under the Revised Pay Scale Rules of 1976 w.e.f. 01st September, 1976. While granting the such additional increment to the petitioner when the period of 10 years was counted his period of work charged service was also taken into

consideration whereas the fact as per the own admission of the petitioner in the writ petition is he was selected by regular selection procedure on the post of L.D.C. by order dated 01st June, 1968 and was granted pay scale on that post by order dated 01st September, 1968. The period of service rendered on work charged basis was therefore erroneously counted within the first ten years and on that basis one grade increment came to be wrongly given to the petitioner. At the same time it cannot be said that the petitioner had made any kind of misrepresentation or gave any false information to the respondents which laid to grant of such extra increment to the petitioner.

It is trite law that if an excess payment on account of certain wrong pay fixation was otherwise has come to be made to an employee by the Government although the Government may rectify the mistake by correcting such error but it cannot recover the amount so paid on account of such mistake.

In the result the writ petition is partly allowed and the

respondents are allowed to make the correction/rectification of the mistake and accordingly issue revised pension payment order to the petitioner but the order dated 06th January, 2003 in so far as seeking to make recovery of the amount paid in excess to the petitioner is concerned, the same cannot be sustained in law and is accordingly quashed and set aside. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC.